IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.7484 OF 2007

Smt.Tillottama Prakash Niphadkar
and Ors. .. Petitioners

Vs.

State of Maharashtra & Ors. .. Respondent

Mr.S.P.Saxena for the petitioners

Mr.R.B.Behre, A.G.P. for respondent nos.1 and 2

CORAM : J.N.PATEL &
SMT.NISHITA MHATRE, JJ.

DATED : 20TH NOVEMBER, 2007

P.C.:

1. Heard the learned counsel for the parties.

2. The petitioners have challenged the order passed by the Maharashtra Administrative Tribunal in group of applications wherein the petitioner was one of the applicant having approached MAT for seeking a declaration that the petitioner is entitled for deemed date of promotion to the post of Sr.Clerk from 19.10.1987 when her junior

Mrs.V.S.Chavan was promoted to the post of Senior Clerk and all consequential benefits. MAT found that as the petitioner has failed to appear for the departmental examination, her case was rightly not considered for giving promotion.

3. It is the case of the petitioner that she has been transferred from forest department to education department in public interest and, therefore, she is entitled to be promoted in due course without appearing for the departmental examination which was not a condition of service in her parent department i.e. the forest department and, therefore, the impugned order deserves to be quashed and set aside.

4. In our view, the contention of the petitioner cannot be accepted for the reason that the petitioner herself alongwith others opted out from various departments. These persons were employees of Class III and IV category pursuant to G.R. No.S-1487/264/P.K.9/F-7 dated 27th March, 1987. The G.R. itself provides for being accommodated in other departments and it

specifically clarified that the employee would be bound by the service condition applicable to the department in which they were absorbed and not the parent department.

5. The petitioner is presently working in the education department and as per Rule 15 of the rules which govern the service conditions of the employees of education department, it is obligatory on the part of the employee to pass the departmental examination before being promoted in higher post. Rule 15 reads as under:

> **"Rule-15:** Failure in the first and second attempts shall not result in stoppage of increment or loss of seniority; but a person who has not passed the examination shall not be promoted to any higher post till he passes the examination. If a person fails in all the three chances, and is allowed a fourth or subsequent chance, the he shall not be allowed to draw the increment after his failure in the third

attempt until he passes the examination or is exempted from passing it by Government by condoning his failure:

Provided that on passing the examination in the fourth or subsequent attempt or on being exempted, he will draw the increments which were withheld and all subsequent increments which will accrue to him as if no increments were withheld. He will not, however, be entitled to arrears of pay".

6. Therefore, MAT was justified in dismissing the Original Applications. We do not find any merits in the petition as there is no error or illegality pointed out to us to interfere with the decision of the MAT. Petition is therefore, dismissed with costs.

(J.N. PATEL, J)

(SMT.NISHITA MHATRE, J)